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UNITED STATES REGIONAL HEARING CLERK
ENVIRONMENTAL PROTECTION AGENCY REGION VI
REGION 6
DALLAS, TEXAS

In the Matter of:

MOORE AGRICULTURE PRODUCTS CO.
GOODLETT, TEXAS

RESPONDENT

)
) DOCKET NUMBER
) FIFRA 06-2002-0318

)
) CONSENT AGREEMENT
) AND
) CONSENT ORDER
)
)
)

PRELIMINARY STATEMENT

1. Complainant, the United States Environmental Protection Agency Region VI (EPA) and Respondent, by their undersigned representatives, hereby consent and agree as follows:

2. EPA initiated this proceeding for the assessment of civil penalties pursuant to Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, 7 U.S.C. Section 1361(a) by issuance of an Administrative Complaint and Notice of Opportunity for Hearing (Complaint) dated April 30, 2002.

3. The Complaint charged Respondent with violations of Section 7(c) of FIFRA, 7 U.S.C. Section 136e(c), Title 40 C.F.R. Section 167.85, failure to file an annual pesticide production report. A total civil penalty of \$5,500.00 was proposed in the Complaint.

4. Complainant and Respondent have agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Consent Order (hereinafter CACO) without further litigation is the most appropriate means of resolving this matter.

II.

AGREEMENT

5. Respondent hereby certifies to the best of its knowledge that, as of the date of execution of this CACO, that the Respondent's facility located on Highway 287 in Goodlet, Texas 79252, is in compliance with all applicable requirements of FIFRA Section 1361(a).

6. Respondent admits the jurisdictional allegations set forth in the Complaint.

7. Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the Complaint or the Findings of Fact and Conclusions of Law contained in this CACO. The Complaint states a claim upon which relief can be granted.

8. Respondent explicitly waives its right to request a hearing on any issue of law or fact set forth in the Complaint and waives all defenses which have been raised or could have been raised to the claims set forth in the Complaint.

9. Respondent consents to the issuance of the CACO hereinafter recited and consents to the assessment and payment of the stated civil penalty in the amount and by the method set out

in this CACO.

10. Compliance with all the terms and conditions of this CACO, shall result in full settlement and satisfaction of the Administrative Complaint and all claims and penalties alleged therein.

11. Each party to this action shall bear its own costs and attorney fees.

12. Except as specifically provided in this CACO, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from Respondent's facility. Furthermore, nothing in this CACO shall be construed to prevent or limit EPA's civil and criminal authorities, or that of other Federal, State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

III.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. Respondent is a corporation.

14. Respondent is a "person" as defined by Section 2(s), 7 U.S.C. Section 136(s).

15. Respondent's business is an "establishment," as that term is defined in Section 2(dd) of FIFRA, 7 U.S.C. Section 136(dd), and 40 C.F.R. Section 167.3.

16. Respondent is a "producer," as that term is defined by Section 2(w) of FIFRA, 7 U.S.C. Section 136(w), and 40 C.F.R. Section 167.3.

17. During calendar year 2001, the Respondent's establishment was registered with EPA as a pesticide producing establishment, pursuant to Section 7 of FIFRA, 7 U.S.C. § 136e, and Title 40 C.F.R. § 167.20, Establishment Number 049517-TX-001.

18. Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), requires any producer operating an establishment registered under that section to inform the Administrator annually, as required by EPA regulations, of the types and amounts of pesticides and, if applicable, active ingredients used in producing pesticides:

- A. which he is currently producing;
- B. which he has produced during the past year; and
- C. which he has sold or distributed during the past year.

19. Title 40 C.F.R. § 167.85 requires producers to file annual pesticide production reports, in accordance with the requirements described in paragraph 19 above, on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.

20. The Respondent was required to file an annual pesticide production report, such as the one described in paragraph 19, for calendar year 2001.

21. The Respondent failed to file its annual pesticide production report for calendar year 2001, by March 1, 2002, as required by Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and Title 40 C.F.R. § 167.85(d).

22. Therefore, Respondent violated Section 7(c) of FIFRA, 7 U.S.C. § 136e(c), and Title 40 C.F.R. § 167.85 by failing to file its annual pesticide production report by March 1, 2002.

IV.

PARTIES BOUND

23. The provisions of this CACO shall apply to, and be binding upon, the parties to this action, their officers, directors, agents, servants, employees, attorneys, successors, and assigns. The undersigned representative of each party to this certifies that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of this CACO and to execute and to legally bind that party to it.

IV.

PENALTY ORDER

24. Pursuant to the authority granted in Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), and upon consideration of the entire record, including consideration of: (1) the size of the Respondent's business; (2) the effect upon Respondent's ability to continue in business; (3) the gravity of the alleged violation; and EPA's "Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)" dated July 2, 1990, it is **ORDERED** that the Respondent be assessed a civil penalty of **THREE THOUSAND THREE HUNDRED DOLLARS (\$3,300.00)**.

25. The penalty shall be paid by mailing a money order, cashier's check, or certified check payable to the Treasurer of the United States of America, within thirty (30) days of the effective date of this Order, to the following address:

Regional Hearing Clerk (6C)
U.S. EPA, Region 6
P.O. Box 360582M
Pittsburgh, Pennsylvania 15251

FIFRA 06-2002-0318 shall be clearly typed on the check to ensure proper credit.

The Respondent shall send a simultaneous notice of such payment, including a copy of the money order, cashier's check, or certified check to the following:

James W. Redd (6PD-P)
Pesticides Section
Multimedia Planning and Permitting Division
U.S. EPA - Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

Your adherence to this request will ensure proper credit is given when penalties are received in the Region.

If EPA does not receive payment within thirty (30) days of the due date, interest will accrue on the amount due from the due date, at the current annual rate prescribed and published by the Secretary of the Treasury in the Federal Register and the Fiscal Requirements Manual Bulletin per annum, through the date of payment.

If the payment is overdue, EPA will also impose a late payment handling charge of FIFTEEN DOLLARS (\$15.00) for each subsequent thirty (30) day period. Finally, EPA will apply a six (6) percent per annum penalty on any principal amount not paid within ninety (90) days of the due date.

Other penalties for failure to make a payment may also apply.

V.


COSTS

Each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small

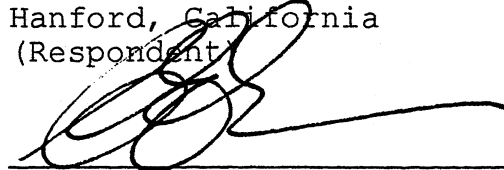
Business Regulatory Enforcement Fairness Act (P.L. 104-121), and any regulations promulgated pursuant to those Acts.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND CONSENT ORDER:

Date: 7-12-02


Martha J. Moore
Operations Manager
Moore Agricultural Products Co., Inc.
Hanford, California
(Respondent)

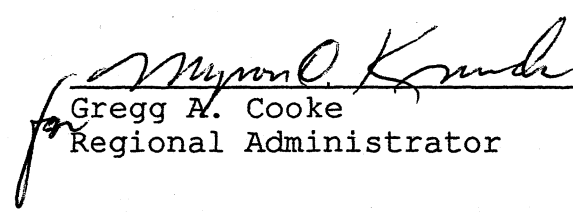
Date: 7/23/02


Carl E. Edlund, P.E.
Director
Multimedia Planning and
Permitting Division
U.S. Environmental Protection Agency
Region 6

This Consent Agreement and Consent Order is hereby adopted and issued pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 1361(a), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22.

It is so ORDERED. This Order shall become effective immediately upon filing with the Regional Hearing Clerk.

Date: 8-29-02



Gregg A. Cooke
Regional Administrator

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of July, 2002, the original of the foregoing Consent Agreement and Consent Order (CACO) was hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency (EPA) - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CACO was sent to the following by the method identified below:

CERTIFIED MAIL - RETURN RECIEPT REQUESTED - 7000 0520 0022 2556 9292

Ms. Martha J. Moore
Operations Manager
Moore Agricultural Products Company, Inc.
11521 Excelsior Avenue
Hanford, California 93230



Judith Powers
Case Development Officer, Pesticides
Multimedia Planning and Permitting Division

